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Attorneys for Defendant Fluke Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon corporation,

No. 3:10-cv-00971-HU

Plaintiff,

v.

Defendant Fluke Corporation's
**MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM**

SIERRA MEDIA, INC., a Washington corporation, and **FLUKE CORPORATION**, a Washington corporation,

ORAL ARGUMENT REQUESTED

Defendants.

PAGE 1 - DEFENDANT FLUKE CORPORATION'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

LOCAL RULE 7.1 CERTIFICATION

Counsel for Defendant Fluke Corporation (“Fluke”) conferred in good faith with counsel for Plaintiff Flir Systems, Inc. (“Flir”) prior to the filing of this Motion. The parties were unable to resolve the issues raised in this motion.

MOTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Fluke Corporation (“Fluke”) respectfully moves to dismiss the Complaint filed by Plaintiff Flir Systems, Inc. (“Flir”) for failure to state claims upon which relief may be granted. First, Flir has failed to state a claim for false advertising under the Lanham Act—15 U.S.C. § 1125(a)(1)(B) (Count One), because Flir failed to plead its claim with requisite particularity, it has not adequately pleaded a false or misleading statement, and it has not adequately pleaded injury. Second, Flir has not stated a claim for trade association/unfair competition under the Lanham Act—15 U.S.C. § 1125(a)(1)(A) (Count Two), because it has not alleged a protectable trademark or trade dress, because Flir has not alleged that Fluke engaged in the unapproved use of that mark or dress, and because Flir has not alleged that, as a result of the alleged unapproved use of that mark or dress, consumers are likely to confuse Fluke’s thermal imaging cameras for Flir’s. Third, Flir has failed to state claims for publication of injurious falsehoods or business disparagement (Counts Three and Four) because it does not appear that either claim is recognized under Oregon law. Furthermore, even if those claims were recognized, Flir has not properly alleged a false statement of fact, has not properly pleaded special damages, and failed properly to allege intent and malice. Fourth, Flir has failed to state a claim for civil conspiracy (Count Five) because it has not pleaded with requisite particularity, has not adequately pleaded an underlying tort, and has failed to adequately allege facts supporting the existence of a conspiratorial agreement. Fifth, Counts Eight (Injunctive Relief) and Nine (Attorneys’ Fees) should be dismissed because they are prayers for relief, rather than separate causes of action.

PAGE 2 - DEFENDANT FLUKE CORPORATION’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Finally, the Court should strike Flir's request for punitive damages and attorneys' fees, as such relief is not permitted under Oregon law for actions based on speech.

DATED: November 1, 2010.

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PAGE 3 - DEFENDANT FLUKE CORPORATION'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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